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In re Application of	:	OFFICE OF PETITIONS
Richard Assaker et al	:	
Application No. 10/771,284	:	DECISION GRANTING PETITION
Filed: February 5, 2004	:	UNDER 37 CFR 1.55(c)
Attorney Docket No. 64118.000046	:	

This is a decision on the petition filed June 18, 2004, under 37 CFR 1.55(c) requesting acceptance of an unintentionally delayed claim under 35 USC 119(a) through (d) for benefit of the filing date of foreign French Application No. FR 98 05558, filed April 30, 1998.

A petition for acceptance of a claim for foreign priority under 37 CFR 1.55(c) is only applicable to those applications filed on or after November 29, 2000. Further, the nonprovisional application must be filed within 12 months of the filing date of the foreign application. In addition, a petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) must be accompanied by:

- (1) the claim under 35 U.S.C. § 119(a)-(d) to the prior foreign application, unless previously submitted;¹
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

¹ The claim must identify in the oath or declaration the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country, and the filing date. *Note* also 37 CFR 1.63(c)(2).

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).


The above-identified pending nonprovisional application was filed on February 5, 2004, which is after November 29, 2000. Intermediate Application No. PCT/IB99/00794 was filed within twelve months of April 30, 1998, (the filing date of the foreign application to which benefit is now being claimed). On July 6, 2004, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of \$1330 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a) through (d) is **granted**.

A filing receipt which sets forth the projected publication date of November 4, 2004 was mailed on July 28, 2004.

This application is being referred to Technology Center AU 3731 for examination in due course and for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a) through (d) and 37 CFR 1.55(c).

Any inquiries directly pertaining to this matter may be directed to the undersigned at (703) 305-8859.



Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy